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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,
8 Plaintiff,

NO. CR-95-0105-WFN-1
CV-08-0036-WFN

9 -vs-

ORDER

10 ROBERT B. ANTHONY,
11 Defendant.

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13 Before the Court are Mr. Anthony's two pro se Motions for Relief of Sentence per
14 18 U.S.C. § 3582(c)(2) (Ct. Recs. 76 and 80). The Motions request relief based upon the
15 United States Sentencing Commission's amendment to the Drug Quantity Table in U.S.S.G.
16 § 2D1.1 whereby the base offense level assigned to each threshold quantity of crack cocaine
17 was adjusted downward by two levels. The amendment is to be applied retroactively effective
18 March 3, 2008. The Government has responded opposing the Motion (Ct. Rec. 84). Mr.
19 Anthony has not filed a reply.

20 The Court has reviewed the file, the Motions, the Government's response and is fully
21 informed. For the reasons stated below the Motions are denied.

22 **BACKGROUND**

23 On December 11, 1995, Mr. Anthony was sentence by this Court to 51 months of
24 incarceration to be followed by 4 years of supervised release based upon his conviction for
25 distribution of over five grams of cocaine base (Judgment filed 12/11/95, Ct. Rec. 42). After
26 Mr. Anthony was released from incarceration, the District of Idaho accepted a transfer of

jurisdiction over his supervised release from the Eastern District of Washington (Ct. Rec. 75). The District of Idaho twice revoked Mr. Anthony's supervised release, most recently on April 12, 2006, when the Court sentenced him to 30 months of incarceration (Dist. of Idaho, CR-01-65-BLW, Ct. Rec. 70). The 30 months of incarceration was to run consecutive to any state court sentence. Mr. Anthony's recent filings in this district indicate he is incarcerated at Terminal Island FCI in San Pedro, California serving his revocation sentence.

DISCUSSION

As noted above, Mr. Anthony is currently serving a sentence of 30 months incarceration for a violation of his term of supervised release. The statute which allows this Court to reduce a term of imprisonment, 18 U.S.C. § 3582(c)(2), does not provide the Court with authority to reduce a sentence imposed for a violation of supervised release.

The statute provides:

in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. § 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment

18 U.S.C. § 3582(c)(2). The term of imprisonment imposed by this Court which could have been lowered if the Defendant were still serving the term, was the original term of 51 months, not a term for a later violation of supervision. This conclusion is supported by the advisory Sentencing Guidelines that relate to this statutory provision. The Application Notes to U.S.S.G. § 1B1.10 provide:

Only a term of imprisonment imposed as part of the original sentence is authorized to be reduced under this section. This section does not authorize a reduction in the term of imprisonment imposed upon a revocation of supervised release.

U.S.S.G. § 1B1.10, cmt., n. 4. In sum, Mr. Anthony is not eligible for the requested relief. Accordingly,

IT IS ORDERED that Mr. Anthony's Motion Under 28 U.S.C. § 2255, Ct. Rec. 76, which the Court previously construed as a Motion for Relief under 18 U.S.C. § 3582(c)(2)

1 and Mr. Anthony's Motion for Relief under 18 U.S.C. § 3582(c)(2), **Ct. Rec. 80**, are
2 **DENIED**.

3 The District Court Executive is directed to:

- 4 • File this Order;
- 5 • Provide copies to Mr. Robert B. Anthony, 08792-085, Federal Correctional
6 Institution, P.O. Box 3007 Terminal Island, San Pedro, CA 90731 and Assistant
7 United States Attorney Frank Wilson; and
- 8 • **CLOSE** the civil file, CV-08-0036-WFN.

9 **DATED** this 21st day of May, 2008.

10
11 s/ Wm. Fremming Nielsen
12 05-21 WM. FREMMING NIELSEN
13 SENIOR UNITED STATES DISTRICT JUDGE
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